82-6852

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

WILLIE JAMES WILSON, JR.,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

APPENDICES TO PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF GEORGIA

Nelson E. Roth, Esq.
The Cornell Law School
Myron Taylor Hall
Ithaca, New York 14853
(607) 256-3408

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In the Supreme Court of Georgia Decided: MAR - 1 1983

38880. WILSON v. THE STATE.

CLARKE, Justice.

Appellant, Willie James Wilson, Jr., was convicted in Pierce County of armed robbery and two counts of murder. He was sentenced to death for each of the murders and to life imprisonment for the armed robbery. His trial was conducted under the Georgia Unified Appeal Procedure. After careful review, we affirm.

The two victims, Alfred Boatright and Morris Highsmith, were shot at approximately 4:00 p.m. on June 22, 1981, while they were working at Boatright's handy stop near Bristol, Georgia. Ninety dollars was taken from the store. Appellant was arrested later in Hinesville.

In a statement given after his arrest, and in his testimony at trial, appellant admitted that he shot Boatright and Highsmith and took $90 from the store. He contended, however, that the shootings were the result of a misunderstanding and that the theft of the cash was an afterthought.

Appellant had been a soldier stationed at Fort Stewart, near Hinesville. In the middle of June, 1981, he left the base, without permission, so that he could,

in his words, "clear up my head . . . [and] . . . get myself together." He spent several days with friends in Blackshear. By June 22, appellant's money was almost gone. He and Darris Miller drove to Hoboken, where appellant filled out two employment applications.

Miller testified that while they were in Hoboken, appellant suggested they "hit" a place, but was dissuaded from doing so by Miller, who told him the Hoboken police were too bad. Miller testified that they went from Hoboken to Waycross, gassed up, and drove west from Waycross, still looking for a place to rob. Appellant pulled a pistol from under the car seat and Miller put two shells in it. Then, according to Miller, appellant "said if he was to ever hit a place, he don't leave no witnesses . . ."

Appellant, testifying in his own behalf, denied that he and Miller had talked about robbing anyone. He testified that when they returned to Blackshear, he dropped Miller off and "went riding," trying to make up his mind whether or not to return to Fort Stewart. His wandering took him to Bristol. He bought a pack of cigarettes at Boatright's and left, but stopped a short distance up the road because he noticed his car was running hot. Upon also discovering that he was nearly out of gas, he returned to Boatright's.

At this point, although appellant admittedly knew that he had less than $15 left and that it would require at least $20 worth of gasoline to fill his tank, appellant instructed Morris Highsmith to fill it up. Afterwards, the two entered the store. Boatright, according to appellant, was standing to the left of the door, behind the counter near the cash register. Highsmith

walked toward the end of the counter. Appellant testified that when he told Boatright he didn't have enough money to pay for the gas, he and Boatright "started exchanging profanity words." Appellant pulled his pistol out of his pocket, intending to pawn it for the gas. Before he could fully explain the situation, however, appellant saw Highsmith bending down behind the counter, got scared, and shot both Highsmith and Boatright. After the "accident" happened, appellant took the cash he saw on the counter near the cash register and fled.

Boatright lived long enough to call for help. When law enforcement officers arrived, Boatright was still alive, sitting in a black chair behind the counter with the telephone in his lap. Blood was observed on the floor between that chair and a brown chair in the rear of the store near the beer cooler. The brown chair also had blood on it. Highsmith was lying face down on the floor in the rear of the store with an overturned folding chair lying across his legs. No weapons were found in the store.

Highsmith died from a gunshot wound which entered his left shoulder and penetrated his spinal canal. In the opinion of Dr. Byron Dawson, who conducted the autopsy, this wound caused instant paralysis of all muscles below the level of the wound and immediate loss of control of heartbeat and breathing.

Boatright suffered a gunshot wound in his right side which caused internal hemorrhaging and, within an hour, his death.

The state, while accepting appellant's admission that he and not some other person shot Boatright and

Highsmith,[1] disputes much of the remainder of appellant's testimony.

For instance, the state points out that had the two victims been standing behind the counter in the positions described by appellant, Boatright would have been to appellant's left and Highsmith to his right. It is therefore unlikely, the state contends, that appellant could have shot Boatright in his right side and Highsmith in his left side. Moreover, there was a television set on the counter which, in appellant's scenario, would have been between him and Highsmith. Finally, given the instant paralysis that Highsmith's wound caused, his body should have been discovered behind the counter, and not in the middle of the floor in the rear of the store with a folding chair lying across his legs.

The state, noting the beer cooler door was open when law enforcement officers arrived, theorizes that appellant, upon entering the store, walked to the beer cooler and opened the door. Then, while Highsmith sat in the wooden folding chair and Boatright sat in the brown upholstered chair, with their backs to the beer cooler, appellant shot both of them, ran to the cash register, took the cash and fled. Highsmith, upon being shot, immediately fell to the floor, his chair

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[1] This admission is corroborated by other evidence, including, but not limited to, ballistics evidence; the testimony of Sue Nell Boatright, who identified appellant as the person driving a yellow car who entered the store just as she was leaving at approximately 4:00 p.m.; and the testimony of Parnell Sapp, who identified appellant's yellow Grand Prix as the car parked by the side of the road north of Boatright's, who saw the same car a few minutes later at Boatright's, and who heard sirens 10-15 minutes after that.

falling across his legs. Boatright walked to the telephone behind the counter, leaving a trail of blood from the brown chair to the telephone.

1. While these theories of the state are conclusions, they can be logically inferred from the evidence. We find the evidence sufficient to support appellant's convictions for malice murder. Jackson v. Virginia, 443 U. S. 307 (99 SC 2781, 61 LE2d 560) (1979). Appellant contends, however, that his armed robbery conviction may not stand, for two reasons.

First, appellant contends that since armed robbery is a lesser included offense of felony murder, where the underlying felony is armed robbery, he cannot be convicted of both. See Odom v. State, 248 Ga. 434 (1) (283 SE2d 885) (1981). Appellant, however, was indicted for malice murder and the trial court charged malice murder. The trial court did not charge felony murder. It follows, then, that appellant was convicted of malice murder and that the armed robbery was not an included offense of either murder. Ruffin v. State, 243 Ga. 95 (11) (252 SE2d 472) (1979).

Second, appellant argues that the armed robbery conviction may not stand because the indictment alleged that the money taken by him was the property of Alfred Boatright, when the evidence showed that it was the property of his daughter, Sue Nell Boatright.

The evidence showed that Alfred Boatright had formerly owned the business but had, in 1979, leased it to Sue Nell. In her absence, Alfred worked at the store and had custody and control of the store and the money in it.

In an armed robbery case, the state must allege and prove that the defendant took property of a person or persons other than the accused. OCGA §§ 16-8-41; 16-1-3(3); McKisic v. State, 231 Ga. 644 (2) (203 SE2d 533) (1977). However, "ownership of the property taken may be laid in the person having actual lawful possession of it, although he may be holding it merely as the agent of another, and it is not necessary to set forth in the indictment the fact that the person in whom the ownership is laid is holding it merely as agent of the real owner." Spurlin v. State, 222 Ga. 179, 182 (7) (149 SE2d 315) (1966).[2] See also, Cline v. State, 153 Ga. App. 576 (3) (266 SE2d 266) (1980).

In any case, there must be a sufficient correspondence between the allegations and the proof: "(1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at the trial; and (2) that he may be protected against another prosecution for the same offense." DePalma v. State, 225 Ga. 465, 469-470 (3) (169 SE2d 801) (1969) (cites omitted). See also Bell v. State, 227 Ga. 800 (1) (183 SE2d 357) (1971). We find that appellant was not subjected to either of these dangers and that the

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[2] Spurlin was decided before the 1968 Revision to the Criminal Code. However, in the committee notes to Chapter 26-20 of former Ga. Code Ann. (Harrison 1977), (which were to be considered "an expression of the legislative intent"), it was stated: "The new law [of robbery] substantially conforms to the former Code provisions, though the form is different." That portion of the definition of armed robbery pertinent here has been carried down unchanged since 1968. Compare Ga. L. 1968, p. 1298 with OCGA § 16-8-41.

evidence authorized the armed robbery conviction. Jackson v. Virginia, supra.

2. Appellant's first five enumerations of error allege error in the denial of funds and expert assistance.

(a) Appellant filed a motion for funds to employ a private psychiatrist to examine appellant. At the hearing on the motion, appellant testified that nothing had occurred in his past that had required a mental evaluation, that he had not filed a plea of insanity, and that he did not consider himself to be insane. No evidence was presented which contradicted appellant's testimony, and appellant did not attempt to raise a defense of insanity at trial.

The trial court denied appellant's request for an independent evaluation, but offered an examination by state psychiatrists. This offer was refused.

"The grant or denial of a motion for independent psychiatric examination lies within the discretion of the trial court and will not be overturned unless an abuse of discretion is shown. [cits] We find no abuse of discretion in denying an independent psychiatric examination in this case." Messer v. State, 247 Ga. 316 (1) (276 SE2d 15) (1981).

(b) Appellant was arrested June 30, 1981. He was indicted the next day and on July 2, M. C. Pritchard was appointed to represent him. Thereafter, appellant filed a motion for additional legal assistance and funds to hire an investigator. On August 24, 1981, the trial court appointed John Thigpen to assist Mr. Pritchard, but denied appellant's request for an investigator. Appellant's trial began in the latter part of January, 1982.

Appellant had the assistance of two attorneys for five months prior to his trial. The court did not abuse its discretion by failing to provide additional funds for an investigator.

(c) Appellant, in three separate motions, sought funds to pay for the services of experts to conduct a community opinion survey, to be used in his motion for change of venue; to investigate and compute discrepancies between the population of Pierce County and its grand and traverse jury pools, in preparation for his jury challenges; and to conduct a statewide survey to be used to determine whether the death penalty is arbitrarily enforced in Georgia. These motions were denied.

This court has consistently held that the grant or denial of a motion for appointment of expert witnesses for an indigent defendant lies within the sound discretion of the trial court and, absent an abuse of discretion, the court's ruling will be upheld. See, e.g., High v. State, 247 Ga. 289 (2) (276 SE2d 5) (1981). We find no abuse of discretion here, and if, in an appropriate case, due process and fundamental fairness might require the state to provide expert assistance to an indigent defendant, this is not such a case. See, Hoback v. Alabama, 607 F2d 680, 682 (5th Cir. 1979).

3. In his sixth and seventh enumerations of error, appellant contends that the court erred in overruling his grand and traverse jury challenges.

Pierce County, according to the 1970 census, is 48.8% male, 51.2% female, 18.1% black, and 81.9% white.[3]

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[3] The jury lists were drawn up before 1980 census figures were available. At the time of the hearing, preliminary 1980 census figures broken down by race, but not by sex, indicated that the percentage of blacks had decreased to 14% of the total population of Pierce County.

The grand jury which indicted appellant was drawn from a list that was 51.3% male, 48.7% female, 13.7% black, and 86.3% white. The traverse jury which convicted appellant was drawn from a list that was 48.2% male, 51.8% female, 14% black, and 86% white.[4]

(a) "Criminal defendants in state courts may challenge discriminatory selections of grand and petit juries through the equal protection clause of the Fourteenth Amendment. [cits]" United States v. Perez-Hernandez, 672 F2d 1380 (11 Cit. 1982). Moreover, criminal defendants in state courts have the right to challenge, under the Sixth Amendment, petit juries not selected from a fair cross section of the community. Duren v. Missouri, 439 U. S. 357 (99 SC 664, 58 LE2d 579) (1979). The two challenges are not entirely analagous. Id, at 439 U. S. 368, n. 26. See also, Walraven v. State, 250 Ga. 401 (3) (297 SE2d 278) (1982). However, common to each is the requirement that the defendant must establish prima facie that a distinct and identifiable group in the community is substantially underrepresented on the jury venire being challenged. The percentages established by appellant fail to show such substantial underrepresentation, and the trial court properly overruled appellant's jury challenges. See Machetti v. Linahan, 679 F2d 236 (11th Cir. 1982) and cases cited therein at p. 241.

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[4] These figures may be more readily visualized in chart form:

	Population (1970)	Grand Jury List	Traverse Jury List
Males	48.8	51.3	48.2
Females	51.2	48.7	51.8
Blacks	18.1	13.7	14
Whites	81.9	86.3	86

(b) The jury commission, at the time of the hearing, was composed of four white males, one black male and one white female, all of whom were over 40. Appellant contends the jury commission was unrepresentative of the population of Pierce County. This contention provides no basis for reversal. Cf. White v. State, 230 Ga. 327, 332 (2) (196 SE2d 849) (1973).

4. In enumerations of error thirteen through twenty-four, appellant contends that his challenges to eleven prospective jurors should have been granted.

(a) Two of the prospective jurors were challenged because they were reserve police officers. Charles Foreman was once a part-time police officer with the City of Blackshear. At the time of the trial, he was a member of the inactive reserves, which meant that, should extra help be needed, he might be called. He did not have a uniform, however, and had done no work in connection with this case. Larry Walker was an auxiliary policeman with the Blackshear police department. He stated that he had never done any criminal investigation on behalf of the Blackshear police department and only helped the police department with ball games.

Hutcheson v. State, 246 Ga. 13 (1) (268 SE2d 643) (1980), which held that police officers, employed full-time, must be excused if challenged for cause in criminal cases, is inapplicable to this case. Since Walker and Foreman stated that their limited connections with the Blackshear police department would not influence their deliberations and they could be impartial and fair to both sides, the trial court did not err in overruling appellant's challenges for favor. See Jordan v. State, 247 Ga. 328 (6) (276 SE2d 224) (1981).

(b) The other nine prospective jurors were challenged because they knew one or more of the victims or their families.

Juror Ann C. Wall was probably best acquainted with at least one of the victims. She had worked in the local ASCS office for years and through her work had come into contact with Alfred Boatright. Although she never socialized with him, she had "known him for years as a friend." She conceded to defense counsel that as a result of her friendship with Boatright she might favor his side a "little bit." However, she stated she thought she could be fair and impartial and would consider only the evidence presented in the case. She stated she had no opinion regarding appellant's guilt or innocence.

Most of the rest of the challenged jurors knew one or the other of the victims only casually. None of them had an opinion as to appellant's guilt or innocence, nor did any express a bias or prejudice against appellant. "On this record we cannot find that the trial judge erred in overruling the challenges for favor. [cites]" Jordan v. State, Id. at 340.[5]

5. In his eighth enumeration of error, appellant contends the trial court erred in denying his motion for change of venue. We find no error. Of the 64 jurors who were examined, only 4 were excused for bias or prejudice resulting from pre-trial publicity.[6] None of the

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[5] Of the eleven jurors challenged, only one sat on his jury. We note that appellant used only 19 of his 20 peremptory strikes.

[6] Two other jurors were excused because of bias or prejudice resulting from friendship with the victims or their families. Three jurors were excused for conscientious objection to the death penalty. Other jurors, not all of whom underwent voir dire, were excused for health reasons or because of kinship within a prohibited degree.

jurors put upon appellant expressed any opinion as to his guilt or innocence. The low number of veniremen excused corroborates the absence of such prejudicial publicity as would require the grant of a motion for change of venue. Messer v. State, supra.

6. In his twelfth enumeration of error, appellant contends that because his character was placed in issue during the jury voir dire, the entire jury panel should have been dismissed and a new venire obtained.

When the court asked the fourth juror on the panel the statutory question--"Have you any bias or prejudice resting on your mind either for or against the accused?"--The juror responded that he did because he was a retired military man and he had read that appellant had been AWOL at the time of the alleged offense. The juror was excused, but the trial court refused to disqualify the rest of the jurors, most of whom had heard the answer. Instead, the trial court instructed the other jurors to disregard unresponsive answers by fellow prospective jurors. Additionally, during the remainder of the voir dire, the court asked each juror if the juror had heard the remark of the fourth juror and, if so, had the remark affected the juror's impartiality in any way. Only one juror indicated a bias concerning the answer and he stated that he had already read the same thing and was already biased before he heard the remark. This juror was excused.

In view of the remedial action taken by the trial court and the responses of the jurors, and especially in view of the fact that, at trial, appellant admitted on direct examination that he was absent without leave from Fort Stewart when he killed Boatright and Highsmith, we

find no error in the court's refusal to disqualify the entire jury panel for prejudice and bias.

7. Appellant's tenth and eleventh enumerations of error are not supported by argument or citation of authority. See Supreme Court Rule 45. We have nonetheless reviewed each asserted error pursuant to Rule IV (b) (2) of the Georgia Unified Appeal Procedure and conclude that neither has addressable merit.

8. When the case was called for trial, on January 25, 1982, appellant moved for a continuance on the ground that two witnesses subpoenaed by the defense on January 20 had not been served and were not present to testify. The sheriff testified that he had searched for, but had been unable to locate, these witnesses.

Appellant's attorneys admitted to the trial court that they had not talked to either witness. They contended, however, that, according to information they had, one of the witnesses had been inside Boatright's store when the shooting occurred and would testify that the shooting was not planned, but was the result of an argument; the other witness had been outside the store and had seen the first witness run out the door when the shooting started. No witnesses were offered to substantiate this information.

In our opinion, appellant failed to demonstrate that, had a continuance been granted, he would have been able to locate either of the witnesses. Nor do we think that appellant established, by anything other than speculation, that the testimony of the missing witnesses would have been material.[7] In these circumstances, the

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[7] At trial, neither appellant's testimony, nor any other evidence, indicated the presence of anyone inside the store, at the time of the robbery, other than appellant and his two victims.

trial court did not abuse its discretion by refusing to grant a continuance. OCGA § 17-8-25; Lee v. State, 154 Ga. App. 562 (4) (269 SE2d 65) (1980).

SENTENCE REVIEW

The jury recommended the sentence of death for each of the murders. The supporting aggravating circumstances found by the jury may be summarized as follows: The murder of Alfred Boatright was committed while appellant was engaged in the commission of two other capital felonies, the murder of Morris Highsmith and the armed robbery of Alfred Boatright; the murder of Morris Highsmith was committed while appellant was engaged in the commission of two other capital felonies, the murder of Alfred Boatright and the armed robbery of Alfred Boatright.

9. The doctrine of "mutually supporting aggravating circumstances" precludes simultaneous use of the murder of Boatright to support the death penalty for Highsmith and use of the murder of Highsmith to support the death penalty for Boatright. Burden v. State, 250 Ga. 313 (6) (297 SE2d 242) (1982); Waters v. State, 248 Ga. 355 (12) (283 SE2d 238) (1981); Gregg v. State, 237 Ga. 117 (210 SE2d 659) (1974). We therefore set aside the statutory aggravating circumstance that the murder of Highsmith occurred during the murder of Boatright.

Since at least one statutory aggravating circumstance remains to support each sentence of death, the elimination of one such circumstance does not require reversal of either sentence. OCGA § 17-10-30 (c); Zant v. Stephens, 250 Ga. 97 (297 SE2d 1) (1982). The remaining statutory aggravating circumstances are supported by the evidence. Jackson v. Virginia, supra.

10. The trial court did not err when it allowed the state to introduce evidence of appellant's prior record of convictions during the sentencing phase of the trial. OCGA § 17-10-2; Zant v. Stephens, supra; Horton v. State, 249 Ga. 871 (6) (295 SE2d 281) (1982). Appellant's twenty-sixth enumeration of error is meritless.

11. The sentences of death were not imposed under the influence of passion, prejudice or other arbitrary factor. OCGA § 17-10-35 (c) (1).

12. In his twenty-fifth enumeration of error, appellant contends the trial court erred in refusing to allow him to present to the jury, during the sentencing phase of the trial, evidence of penalties imposed in allegedly similar cases in the Waycross judicial circuit. We find no error.

A defendant may present, during the sentencing phase of a death penalty case, evidence relating to the defendant's character, prior record, or the circumstances of his offense. Lockett v. Ohio, 438 U. S. 586 (96 SC 2654, 57 LE2d 973) (1978); Franklin v. State, 245 Ga. 141 (7) (263 SE2d 666) (1980). See also Horton v. State, supra, divisions (4), (5) and (6). However, it is for this court, and not the jury, to determine whether a sentence of death is excessive or disproportionate to the penalty imposed in similar cases. OCGA § 17-10-35 (c) (3). The trial court properly refused to allow appellant to present to the jury evidence of penalties imposed in other cases, and this enumeration of error is meritless.

13. "The similar cases listed in the appendix support the death penalty in this case. Those cases

show that juries find that the death penalty is appropriate punishment where an adult is found to have been the actual perpetrator of, or active participant in, double murders committed upon victims who are unrelated to the defendant. Features frequently found in such cases are burglaries, armed robberies or kidnappings." Rivers v. State, 250 Ga. 288, 302 (10) (298 SE2d 10) (1982). In this case, appellant, an adult, was found guilty of being the actual perpetrator of the murder of two unarmed, elderly men during the armed robbery of a convenience store.

The sentences of death imposed in this case are neither excessive nor disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

Judgment affirmed. All the Justices concur.

APPENDIX

Pass v. State, 227 Ga. 730 (182 SE2d 779) (1971); Gregg v. State, 233 Ga. 117 (210 SE2d 659) (1974); Floyd v. State, 233 Ga. 280 (210 SE2d 810) (1974); Chenault v. State, 234 Ga. 216 (215 SE2d 223) (1975); Birt v. State, 236 Ga. 815 (225 SE2d 248) (1976); Peek v. State, 239 Ga. 422 (238 SE2d 12) (1977); Westbrook v. State, 242 Ga. 151 (249 SE2d 524) (1978); Finney v. State, 242 Ga. 582 (250 SE2d 388) (1978); Holton v. State, 243 Ga. 312 (253 SE2d 736) (1979); Waters v. State, 248 Ga. 355 (283 SE2d 238) (1981); Mathis v. State, 249 Ga. 454 (291 SE2d 489) (1982); Rivers v. State, 250 Ga. 288 (298 SE2d 10) (1982).

APPENDIX B

CHARGE BY THE COURT:

Members of the jury, you've found the defendant guilty of the murder of Alfred Boatright as charged in count one of the indictment, also of the murder of Morris Highsmith as charged in count two of the indictment, and of armed robbery of Alfred Boatright as charged in count

ANN FLETCHER
Official Court Reporter
Waycross Judicial Circuit
Post Office Box 1403
Waycross, Georgia 31501
(912) 283-4100

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three of the indictment. It is now your duty to determine within the limits prescribed by law the penalty which shall be imposed as punishment for the murder of Alfred Boatright and the penalty which shall be imposed as punishment for the murder of Morris Highsmith.

It is the duty of the Court rather than the jury to determine the penalty which shall be imposed as punishment for the armed robbery of Alfred Boatright, therefore, you, the jury are not to concern yourselves with any penalty to be imposed for the armed robbery. You are to determine, however, the penalty to be imposed for the two murders for which you have found the defendant guilty.

The law of this State provides that a person convicted of murder shall be punished by death or by imprisonment for life, therefore, it is for you, the jury, to determine in this case whether the defendant shall be punished by death or by imprisonment for life for the murder of Alfred Boatright, and whether the defendant shall be punished by death or by imprisonment for life for the murder of Morris Highsmith.

In reaching that determination you shall consider all of the evidence, fact and circumstances of the case which have appeared at both the guilt-innocence phase and at this pre-sentencing phase of the trial of this case, including any and all evidence in extenuation, mitigation

and aggravation of punishment.

Now members of this jury, the law of this State authorizes, but does not require, the imposition of the death penalty for the offense of murder only if one or more statutory aggravating circumstances are found to exist beyond a reasonable doubt. The statutory aggravating circumstances that you are authorized to consider with respect to the penalty to be imposed upon the defendant as punishment for the murder of Alfred Boatright and the statutory aggravating circumstances that you are authorized to consider with respect to the penalty to be imposed upon the defendant as punishment for the murder of Morris Highsmith will be submitted in writing to you by this Court for your deliberations, and are as follows: with respect to the penalty to be imposed upon the defendant as punishment for the murder of Alfred Boatright, the jury is authorized to consider the following statutory aggravating circumstances: (1) The offense of the murder of Alfred Boatright was committed while the defendant was engaged in the commission of another capital felony, to wit: the murder of Morris Highsmith, and (2) the offense of murder of Alfred Boatright was committed while the defendant was engaged in the commission of another capital felony, to wit: the armed robbery of Alfred Boatright

Now with respect to the penalty to be imposed

ANN FLETCHER
Official Court Reporter
Waycross Judicial Circuit
Post Office Box 1403
Waycross, Georgia 31501
(912) 283-4100

upon the defendant as punishment for the murder of Morris Highsmith, the jury is authorized to consider the following two statutory aggravating circumstances. (1) The offense of murder of Morris Highsmith was committed while the defendant was engaged in the commission of another capital felony, to wit: the murder of Alfred Boatright, and the offense -- (2) the offense of murder of Morris Highsmith was committed while the defendant was engaged in the commission of another capital felony, to wit: the armed robbery of Alfred Boatright.

Now, members of the jury, before you would be authorized to find a verdict imposing upon the defendant the death penalty for the murder of Alfred Boatright, you would first be required to find that the evidence is sufficient to prove beyond a reasonable doubt the existence of one or more of the following statutory aggravating circumstances. (1) The offense of murder of Alfred Boatright was committed while the defendant was engaged in the commission of another capital felony, to wit: the murder of Morris Highsmith, and (2) the offense of murder of Alfred Boatright was committed while the defendant was engaged in the commission of another capital felony, to wit: the armed robbery of Alfred Boatright.

In considering the penalty to be imposed upon the defendant for the murder of Alfred Boatright, members

of the jury, even if you should find one or more of the statutory aggravating circumstances which I have just given you in charge to exist beyond a reasonable doubt, you are not required to impose upon the defendant the death penalty for the murder of Alfred Boatright, but you would still be authorized to, and may impose upon the defendant imprisonment for life rather than death.

Now before you would be authorized to find a verdict imposing upon defendant the death penalty for the murder of Morris Highsmith, you would first be required to find that the evidence is sufficient to prove beyond a reasonable doubt the existence of one or more of the following statutory aggravating circumstances. (1) The offense of murder of Morris Highsmith was committed while the defendant was engaged in the commission of another capital felony, to wit: the murder of Alfred Boatright, and (2) the offense of murder of Morris Highsmith was committed while the defendant was engaged in the commission of another capital felony, to wit: the armed robbery of Alfred Boatright.

In considering the penalty to be imposed upon the defendant for the murder of Morris Highsmith, members of the jury, even if you should find one or more of the statutory aggravating circumstances which I've just given you in charge to exist beyond a reasonable doubt, you are not required to impose upon the defendant the death penalty

for the murder of Morris Highsmith, but you would still be authorized to, and may impose upon the defendant imprisonment for life rather than death.

Now if you should find a verdict imposing upon the defendant the death penalty for the murder of Alfred Boatright, you must also designate in writing and sign by the foreman of the jury the aggravating circumstance, or circumstances which you find to exist beyond a reasonable doubt.

If you should find a verdict imposing upon the defendant the death penalty for the murder of Morris Highsmith, you must also designate in writing and sign by the foreman of the jury, the aggravating circumstance or circumstances which you find to exist beyond a reasonable doubt.

Now members of the jury, if, after considering all the evidence, facts and circumstances of this case which have appeared at both the guilt-innocence phase and at the pre-sentencing phase of the trial of this case, including any and all evidence, facts and circumstances in extenuation, mitigation and aggravation of punishment, you determine that for the murder of Alfred Boatright the defendant shall be punished by imprisonment for life, then the the form of your verdict would be: We the jury hereby determine that for the murder of Alfred Boatright the

ANN FLETCHER
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Post Office Box 1403
Waycross, Georgia 31501
(912) 283-4100

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defendant shall be punished by imprisonment for life. And then you would date the verdict and the foreman would sign the verdict.

If, however, after considering all the evidence, facts and circumstances of this case which have appeared at both the guilt-innocence phase and at the pre-sentencing phase of the trial of this case, including any and all evidence, facts and circumstances in extenuation, mitigation and aggravation of punishment, you determine that for the murder of Alfred Boatright the defendant shall be punished by death, then the form of your verdict would be: We the jury hereby determine that for the murder of Alfred Boatright the defendant shall be punished by death, and we the jury hereby find to exist beyond a reasonable doubt the following statutory aggravating circumstance or circumstances: and then you would designate in writing the statutory aggravating circumstance or circumstances which the jury found to exist beyond a reasonable doubt.

Now members of the jury, if after considering all the evidence, facts and circumstances of this case which have appeared at both the guilt-innocence phase and at the pre-sentencing phase of the trial of this case, including any and all evidence, facts and circumstances in extenuation, mitigation and aggravation of punishment, you determine that for the murder of Morris Highsmith the

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Official Court Reporter
Waycross Judicial Circuit
Post Office Box 1403
Waycross, Georgia 31501
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defendant shall be punished by imprisonment for life, the form of your verdict would be: We the jury hereby determine that for the murder of Morris Highsmith the defendant shall be punished by imprisonment for life.

If, however, after considering all the evidence, facts and circumstances of the case which have appeared at both the guilt-innocence phase and at the pre-sentencing phase of the trial of this case, including any and all evidence, facts and circumstances in extenuation, mitigation and aggravation of punishment, you determine that for the murder of Morris Highsmith the defendant shall be punished by death, then the form of your verdict would be: We the jury hereby determine that for the death of Morris Highsmith the defendant shall be punished by death -- excuse me. The form of that verdict would be: We the jury hereby determine that for the murder of Morris Highsmith the defendant shall be punished by death, and we the jury hereby find to exist beyond a reasonable doubt the following statutory aggravating circumstance or circumstances: and then you would follow by designating in writing the statutory aggravating circumstance or circumstances which you the jury found to exist beyond a reasonable doubt.

Now, members of the jury, I am going to send out with you a form, typewritten form of each of the verdicts that I -- the forms that I have just read to you in charge

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02734

For the punishment to be determined by this jury for the murder of Alfred Boatright, you will have both forms. One for imprisonment for life, and one for death. The same for the punishment for the murder of Morris Highsmith.

Now the Court can't designate in writing the circumstances, or aggravating circumstance or circumstances so that if you decide upon the death penalty the jury must add, in writing, designate in writing in that form of verdict that you'll have out with you those -- that aggravating circumstance or circumstances which you found to exist beyond a reasonable doubt.

Now members of the jury, your verdict must be agreed to by all twelve of you. It must, of course, be in writing, dated and signed by your foreman and returned by you into court for publication.

You may now retire to the jury room, but do not begin your deliberations until the evidence is delivered to you by the bailiff, also, the indictment, the aggravating -- statutory aggravating circumstance or circumstances which you are authorized to consider in each of the two verdicts that you are required to return. And also, the forms of the verdicts that you would be authorized to return as punishment in this case.

Mr. Bailiff, would you take the twelve jurors to the jury room.

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state any objection that you have to your defense counsel at this time. Do you have any objection to your defense counsel?

MR. WILSON: No, sir.

THE COURT: Do you have any objection to the manner in which your defense counsel has conducted, or is conducting the defense?

MR. WILSON: No, sir.

THE COURT: All right, this court will be in recess.

(THE PROCEEDINGS IN THE COURTOOM ARE RECESSED AT 4:20 P.M. AT 7:10 P.M. THE JURY IS RETURNED TO THE JURY BOX; THE FOLLOWING TRANSPIRES:)

THE COURT: Members of the jury, have you reached a verdict?

MR. FOREMAN: We have, Your Honor.

THE COURT: Would the Foreman hand the verdict to the Clerk, and would the Clerk publish the verdict.

MR. CLERK: (Reading verdict.) "In the Superior Court for the County of Pierce, State of Georgia State of Georgia versus Willie James Wilson, Jr. Indictment number 878.

"We the jury hereby determine that for the death of Morris Highsmith the defendant shall be

APPENDIX C

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punished by death, and we the jury hereby find to exist beyond a reasonable doubt the following statutory aggravating circumstances or circumstances: The offense of murder of Morris Highsmith was committed while the defendant was engaged in the commission of another capital felony, to wit: the murder of Alfred Boatright.

"The offense of murder of Morris Highsmith was committed while the defendant was engaged in the commission of another capital felony, to wit: the armed robbery of Alfred Boatright.

"This 6th day of February, 1982.

"Jacob R. Popham, Jr., Foreman."

"In Superior Court for the County of Pierce, State of Georgia, State of Georgia versus Willie James Wilson, Jr., Indictment number 878

"We the jury hereby determine that for the murder of Alfred Boatright the defendant shall be punished by death and we the jury hereby find to exist beyond a reasonable doubt the following statutory aggravating circumstance or circumstances:

"The offense of murder of Alfred Boatright was committed while the defendant was engaged in the commission of another capital felony, to wit: the murder of Morris Highsmith.

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"The offense of murder of Alfred Boatright was committed while the defendant was engaged in the commission of another capital felony, to wit: the armed robbery of Alfred Boatright.

"This 6th day of February, 1982.

"Jacob R. Popham, Jr., Foreman."

THE COURT: All right, let defense counsel examine the verdicts.

MR. PRITCHARD: (Examining verdicts.) Verdicts seem to be in proper form.

MR. STRICKLAND: State has no question as to the form.

THE COURT: All right, hand me the verdict so I can poll the jury.

Now, members of the jury, it is necessary that I poll each of you individually with respect to the two verdicts that have just been published, and as I call your name would you please stand and answer the questions which I will propound to you.

Mrs. H.M. Thompson. Mrs. Thompson, were these two verdicts your verdicts when they were reached in the jury room?

JUROR: Yes, sir.

THE COURT: Were they freely and voluntarily made by you?

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Report of the Trial Judge

of the

Superior Court of Pierce County, Georgia

The State vs. Willie James Wilson, Jr.
(A case in which the death penalty was imposed)

A. Data Concerning the Defendant

1. Name Wilson (Last) Willie (First) James, Jr. (Middle) 2. Date of Birth 11/8/56 (Mo. Day Yr)

3. Social Security Number 252 98 9988
4. Sex M [X] F [ ]
5. Marital Status: Never Married [ ]; Married [ ]; Divorced [X]; Spouse Deceased [ ]

6. Children
(a) Number of children -0-
(b) Ages of children: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18
(Circle age of each child)

7. Father living: Yes [X] No [ ] If deceased, give date of death _____
8. Mother living: Yes [X] No [ ] If deceased, give date of death _____
9. Number of children born to parents Seven
10. Education--Highest Grade Completed: 1 2 3 4 5 6 7 8 9 10 11 (12) 13 14 15 16 [college
(Circle one)

11. Intelligence Level: (IQ below 70) Low [ ]
(IQ 70 to 100) Medium [ ]
(IQ above 100) High [ ]

12. Psychiatric Evaluation Performed: Yes [ ] No [X]
If performed is defendant:
a. Able to distinguish right from wrong? [ ] [ ]
b. Able to adhere to the right? [ ] [ ]
c. Able to cooperate intelligently in his own defense? [ ] [ ]

13. If examined, were character or behavior disorders found? Yes [ ] No [ ]
(If answer is yes, please elaborate) _____

14. What other pertinent psychiatric [and psychological] information was reveal

15. Prior work record of defendant:

Type Job	Pay	Dates Held	Reason for Terminatio
a. Fort Stewart	$700 & $900 monthly	Dec. 1979-June 19,1981	A.W.O.L.
b.			
c.			
d.			
e.			

*A separate report must be submitted for each defendant sentenced to death.

B. Data Concerning the Trial

1. Was the case tried with or without jury? With [X] Without [ ]

2. How did the defendant plead? Guilty [ ] Not guilty [X]

C. Offense Related Data

1. Capital Offense for Which Penalty Imposed:

a.	Treason	[ ]
b.	Murder	[X]
c.	Kidnapping for Ransom	[ ]
d.	Kidnapping where Injury Results . .	[ ]
e.	Aircraft Hijacking.	[ ]
f.	Rape	[ ]
g.	Armed Robbery	[ ]

2. Were other offenses tried in the same trial? yes [X] no [ ]

If other offenses were tried in the same trial list those offenses.

a. Armed Robbery

b. _____

c. _____

d. _____

3. If tried with jury, did the jury recommend the death sentence? Yes [X] No [ ]

4. Statutory aggravating circumstances found: Yes [X] No [ ]

5. Which of the following statutory aggravating circumstances were instructe and which were found?

	Instructed	Fou
a. (1) The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony, or	[ ]	[
(2) The offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions.	[ ]	[
b. (1) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony or aggravated battery or	[X]	[
(2) The offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree.	[ ]	[
c. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.	[ ]	[

		Instructed	Found
d.	The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value.	[ ]	[ ]
e.	The murder of a judicial officer, former judicial officer, district attorney or solicitor or former district attorney or solicitor during or because of the exercise of his official duty.	[ ]	[ ]
f.	The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.	[ ]	[ ]
g.	The offense of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.	[ ]	[ ]
h.	The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.	[ ]	[ ]
i.	The offense of murder was committed by a person in, or who has escaped from the lawful custody of a peace officer or place of lawful confinement.	[ ]	[ ]
j.	The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.	[ ]	[ ]

6. List nonstatutory aggravating circumstances indicated by the evidence, if any.

a. Burglary

b. Criminal Damage to Property, 2nd Degree

c. Obstruction of Officer; Speeding; Driving without License; Leaving

d. Scene of Accident

7. Was there evidence of mitigating circumstances? Yes [X] No [ ]

8. If so, which of the following mitigating circumstances was in evidence?

a. The defendant has no significant history of prior criminal activity. [ ]

b. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. [ ]

c. The victim was a participant in the defendant's homicidal conduct or consented to the homicidal act. [ ]

d. The murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct. (Claimed provocation because of victim's language used toward him and justification because he thought victim was going for a gun. [X]

e. The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor. [ ]

f. The defendant acted under duress or under the domination of another person. [ ]

g. At the time of the murder, the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication. [ ]

h. The youth of the defendant at the time of the crime. [ ]

i. Other.
Please explain if (i) is checked _____

_____

_____

9. If tried with a jury, was the jury instructed to consider mitigating circumstances? Yes [X] No [ ]

10. Does the defendant's physical or mental condition call for special consideration? Yes [ ] No [X]

11. Although the evidence suffices to sustain the verdict, does it foreclose all doubt respecting the defendant's guilt? Yes [X] No [ ]

12. Was the victim related by blood or marriage to defendant? Yes [ ] No [X]

13. If answer is yes, what was the relationship? _____

_____

_____

14. Was the victim an employer or employee of defendant?
No [X]
Employer [ ]
Employee [ ]

15. Was the victim acquainted with the defendant?
No [X]
Casual Acquaintance [ ]
Friend [ ]

16. Was the victim local resident or transient in the community?
Resident [X]
Transient [ ]

17. Was the victim the same race as defendant? Yes [ ] No [X]

18. Was the victim the same sex as the defendant? Yes [X] No [ ]

19. Was the victim held hostage during the crime?
No [X]
Yes - Less than an hour [ ]
Yes - More than an hour [ ]

20. Was the victim's reputation in the community:
Good [X]
Bad [ ]
Unknown [ ]

21. Was the victim physically harmed or tortured? Yes [X] No [ ]
If yes, state extent of harm or torture: _____

Fatally shot with a .38 caliber pistol

_____

_____

22. What was the age of the victim? Alfred Boatright-65; Morris Highsmith-59

23. If a weapon was used in commission of the crime was it?

No weapon used	[ ]
Poison	[ ]
Motor Vehicle	[ ]
Blunt Instrument	[ ]
Sharp Instrument	[ ]
Firearm	[X]
Other _____	[ ]

24. Does the defendant have a record of prior convictions? Yes [X] No [ ]

25. If answer is yes, list the offenses, the dates of the offenses and the sentences imposed?

	Offense	Date of Offense	Sentence Imposed
a.	Criminal Damage to Property, Misd.	1974	Youthful Offender Act - 6 years
b.	Obstruction of Officer, Speeding, Driving w/o License, Running Stop Sign	1974	
c.			
d.	Burglary	1976	5 years

26. Was there evidence the defendant was under the influence of narcotics or dangerous drugs at the time of the offense? Yes [ ] No [X]

27. Was the defendant a local resident or transient in the community?

Resident	[ ]
Transient	[X]

D. Representation of Defendant *

1. Date counsel secured July 2, 1981

2. How was counsel secured? a. Retained by defendant [ ]
   b. Appointed by Court [X]

3. If counsel was appointed by court was it because
   a. Defendant unable to afford counsel? [X]
   b. Defendant refused to secure counsel? [ ]
   c. Other (explain) _____

4. How many years has counsel practiced law? a. 0 to 5 [ ]
   b. 5 to 10 [ ]
   c. over ten [X]

5. What is the nature of counsel's practice? a. Mostly civil [ ]
   b. General [ ]
   c. Mostly criminal [X]

6. Did the same counsel serve throughout the trial? Yes [X] No [ ]

7. If not, explain in detail _____

* (If more than one counsel served answer the above questions as to each counsel and attach to this report.)

E. General Considerations

1. Was race raised by the defense as an issue in the trial? Yes [X] No [ ]
   Claimed victim made racial slurs.
2. Did race otherwise appear as an issue in the trial? Yes [ ] No [ ]
3. What percentage of the population of your county is the same race as the defendant?
   a. Under 10% . . . . . [ ]
   b. 10 to 25% . . . . . [X]
   c. 25 to 50% . . . . . [ ]
   d. 50 to 75% . . . . . [ ]
   e. 75 to 90% . . . . . [ ]
   f. Over 90% . . . . . [ ]
4. Were members of defendant's race represented on the jury? Yes [ ] No [ ]
5. If not, was there any evidence they were systematically excluded from the jury? Yes [ ] No [ ]
6. Was the jury instructed to exclude race as an issue? Yes [ ] No [ ]
7. Was there extensive publicity in the community concerning this case? Yes [X] No [ ]
8. Was the jury instructed to disregard such publicity? Yes [ ] No [ ]
9. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence? Yes [ ] No [ ]
10. Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes [ ] No [ ]
11. If answer is yes, what was that evidence? _____
12. In your opinion, was the death sentence imposed in this case appropriate? Yes [X] No [ ]

General comments concerning your answer: _____

F. Chronology of Case

		Elapsed Days
1.	Date of Offense June 22, 1981	
2.	Date of Arrest June 30, 1981	8
3.	Date Trial Began January 25, 1982	217
4.	Date Sentence Imposed February 6, 1982	229

5. Date post trial motions ruled on n/a

6. Date Trial Judge's Report Completed 6/28/82

7. *Date received by Supreme Court _____

8. *Date sentence review completed _____

9. *Total elapsed days _____

*To be completed by Supreme Court

This report was submitted to the defendant's counsel for such comments as he desired to make concerning the factual accuracy of the report, and

1. His comments are attached ( )
2. He stated he had no comments ( )
3. He has not responded (X)

6-28-82
Date

Clarence D. Peterson
Judge, Superior Court of

Pierce County

APPENDIX E

States Enumerating a Nonexclusive List of Mitigating Circumstances and which Require "Weighing" of Aggravating and Mitigating Circumstances:

Alabama	ALA. CODE 13A-5-48.
California	CAL. PENAL CODE 190.2,3.
Florida	FLA. STAT. ANN. 921.141 (West, 1982 pocket part).
Indiana	IND. CODE ANN. 35-50-2-9 (Burns 1979 repl. vol.).
Maryland	MD. ANN. CODE 27-413 (1982 pocket part).
Massachusetts	MASS. GEN. LAWS ANN. 279.69 (1982 supp.).
Mississippi	MISS. CODE ANN. 99-19-101 (1982 pocket part).
Missouri	MO. REV. STAT. 40A-565.012 (1979).
Nebraska	NEB. REV. STAT. 2902522(2) (1979).
Nevada	NEV. REV. STAT. 175.554(1c) (1981).
New Jersey	N.J. STAT. ANN. 2C:11-3(3) (West 1982).
New Mexico	N.M. STAT. ANN. 31-20A-2(B) (1978).
North Carolina	N.C. GEN. STAT. 15A-2000 (1981 cum. supp.).
Ohio	OHIO REV. CODE ANN. 2929.03 (Baldwin 1982).
Wyoming	WYO. STAT. 6-4-102 (1977).

States Enumerating Nonexclusive Statutory Mitigating Factors:

Alabama	ALA. CODE 13A-5-51.
Arizona	ARIZ. REV. STAT. ANN. 13-703 (1982 pocket part).
Arkansas	ARK. STAT. ANN. 41-1304.
Colorado	COLO. REV. STAT. 16-11-103 (1978).
Connecticut	CONN. GEN. STAT. 53a-46a (1983 pocket part).
Florida	FLA. STAT. ANN. 921.141 (West 1982 pocket part).
Illinois	ILL. STAT. ANN. 7A.04 (Smith-Hurd 1982 pocket part).
Indiana	IND. CODE ANN. 35-50-2-9 (Burns 1979 repl. vol.).
Kentucky	KY. REV. STAT. 532.025 (1981 cum. supp.).
Louisiana	LA. CODE CRIM. PROC. ANN. 905.5 (West 1983 pocket part).
Maryland	MD. ANN. CODE 27-413 (1982 pocket part).
Massachusetts	MASS. GEN. LAWS ANN. 279.69 (1982 supp.).
Mississippi	MISS. CODE ANN. 99-19-101 (1982 pocket part).
Missouri	MO. REV. STAT. 40A-565.012 (1979).
Montana	MONT. CODE ANN. 46-18-304 (1981).
Nebraska	NEB. REV. STAT. 29-2523(2) (1979).
Nevada	NEV. REV. STAT. 200.035 (1981).
New Hampshire	N.H. REV. STAT. ANN. 630.5 (1981 supp.).
New Jersey	N.J. STAT. ANN. 2C:11-3(5) (West 1982).
New Mexico	N.M. STAT. ANN. 31.20A-6 (1978).
North Carolina	N.C. GEN. STAT. 15A-2000 (1981 cum. supp.).
Ohio	OHIO REV. CODE ANN. 2929.04 (Baldwin 1982).
South Carolina	S.C. CODE ANN. 16-3-20(b) (1982 supp.).
Tennessee	TENN. CODE ANN. 39-2-203 (1982).
Utah	UTAH CODE ANN. 76-3-207 (1978).
Virginia	VA. CODE 19.2-264.4 (1982).
Washington	WASH. REV. CODE ANN. 10.95.070 (1982).
Wyoming	WYO. STAT. 6-4-102 (1977).

AFTER WHICH THE JURY RESUME SEATS IN THE JURY BOX; THE FOLLOWING THEN TRANSPIRES:)

THE COURT: Mr. Pritchard, you may proceed with the defendant's closing argument.

MR. PRITCHARD: Thank you, Judge.

CLOSING ARGUMENT BY MR. PRITCHARD:

Ladies and gentlemen of the jury, I know that you are probably glad this case is coming to a conclusion. I know probably during the time you probably heard -- got tired of hearing me talk so. Or all of us. But I ask you at this time to bear with us a little bit longer, because there's one thing for certain, as Mr. Strickland said, he thanked you for your kind attention. Mr. Sams. There's two other people in this courtroom that's got just as much of a burden as anyone else in Pierce County. You might have a burden in your heart in deciding this case. You had to sit here and listen to the evidence. But this Court placed upon John Thigpen and I a burden even greater, to see that he is given a fair trial by a jury of his peers.

And listening to Mr. Sams and Mr. Strickland, I wondered what I could say to you. Is there anything that I can say? Mr. Strickland and Mr. Sams apparently -- Mr. Sams says, "We know you're not gullible." I hope you don't think that I or Mr. Thigpen either one stand here and try to deceive you in any way, shape or form. That's not our

business to deceive you. We don't want to deceive you. This is a court of law, court of justice, and that is all that we are asking for, and want to ask at your hands. Regardless of whether he's guilty or not, he is entitled to be tried upon the truth as to what happened.

Oh, I listened to Mr. Strickland and I wondered in his very beginning what was going to happen in this case, what all the build-up? Why all this other stuff? They had a confession of the man. Had a tape. You heard it. I guess they thought John Thigpen and I was going to get up here and make him lie and change his testimony and everything else to deceive you. All we want is the truth, too, and that's what we're asking for, the truth. They want you to believe this is just a little country store, and two gentlemen sitting in the chairs inside there. And he walked in and just shot them, while they were sitting down talking. It's the most ridiculous thing I have ever heard of in my life. The facts do not show it. So why should they perpetrate a lie on you? If one is perpetrated, that's it. The audacity to stand here and place chairs like this, and say, "He stood here and shot one this way and that way." Ladies and gentlemen of the jury, look at this chart. I want to discuss it some more. Why would the Assistant District Attorney put the man facing the wall? That's what he's done. Why? To go on their own testimony? Why? My

God, why? They want to say he went over and opened that beer ccoler. Who just as logical could have went and opened the beer cooler? Morris Highsmith.

You know, ladies and gentlemen of the jury, Morris come up -- even Sue Nell told you it was hot that day. Apparently she didn't have the air conditioning on. She said, "We did have air conditioning. It wasn't on that day." When her daddy and them come up, she went outside and got some ice to get her something cold to drink. So what do you think Morris Highsmith would have done when he went out there standing in that sun, when he got there? Pumped his gas in, and it's just as likely he'd have walked back there to that cooler and started to get him a drink out of it, a beer or anything else. What evidence do you have that that man ever touched that beer cooler?

I'm not asking you to turn him loose, to walk him out the door, as Mr. Sams might say. Or turn him free. No, I am not. I'm asking you not to convict him on a lie. Let the truth speak. And he can't speak it, cause he stutters and carries on. And might be scared to death. But I tell you one thing. He did stand on that witness stand, for over two hours with Deen Strickland hammering at him. And in my opinion, he did outlast Mr. Strickland. He didn't have to depend on outright lies, suppositions, and to try and trick you into believing Morris Highsmith had walked in and sit

with his back to the wall, to the outside, and was facing the wall. That's what he's tried to tell you. Look at this photograph. Said, "Oh, you couldn't see." Here's a six foot wall here. Here's a cash register. Here -- with the cash register right there, and I guarantee you, I could point right back there and shoot Mr. . . just as quick as anything in the world. As high as it is. I only have to have a thing here. I could put this thing right there, and he'll have this one, and I could see the man in the corner standing there at the counter. Try to deceive you by bringing this little old bitty photograph up here, say you can't see through the door and everything else. Is that justice? Is that fair? No. Photographs are as deceptive as they can be. Talk about fairness, justice. Where is it? The whole gist of it?

Why would they say, "Oh, just sitting in the chair and he walked in there and killed them"? Now ladies and gentlemen of the jury, this is the most ridiculous thing I have ever heard. And I wondered, and wondered and wondered about these things. I don't know why he did, but human nature tells you there's some reason. There's places robbed every day with guns. And nobody's ever shot. Nobody's ever shot. But the trouble is, the robber, 90% of the time, is more scared than his victim. More scared, if he is robbing. More scared.

So we look at all these things, and just take

the facts. Go in there and look to yourself. They have come up here and said, oh, he would steal, he would lie. But what are they trying to do? Prove their own case wrong? Are they trying to prove their own case wrong? The officers say he told them what happened. Is one of these experts contradicting one thing he said happened out there? Have one of them? The only experts that have are Mr. Sams and Mr. Strickland. Putting Highsmith here, and they'd have to shoot him, cause the chair wouldn't have been there. This chair was sitting way back here in this corner. From here, there was no way he could have shot him in the left arm. This is the counter. Look at it. The way it's drawn out. Put it right there. This is your counter right there. That chair's over there, and it's no way. And it had to be within this distance. There's no way he could have shot him in the right arm. No way, with him sitting down. And I'll challenge Mr. Sams or anyone else in that direction to try it, or do it. The gun would have had to been way back over here, not right there where you're standing. And you take that chair that's in that corner there. It was way over there in the corner facing that way, and he wants you to believe now, that the chair was turned around this way. There's no way he'd been facing the wall. Absolutely none.

Now here's old Morris Highsmith -- now they say this, there was another chair there. But why would Morris

have turned that chair -- this chair here, why would he have turned it into the wall, so he could have been shot in the left shoulder? I'll assure you, both of these chairs was turned around. If anything, they would have been turned toward that television set. If anything. And there would have been no way he could have stood right here and shot him in the back, and shot him in the left arm. No way possible. What . . you believe that. What difference does it really make? Except their own theory. Their own theory. Go to all that trouble of getting these boots and bringing them into court. That's his sock. There's a sock in there. There's his boots. What one item in there shows you that this man killed anybody? What does it show, or prove? Absolutely, unequivocally nothing. What does anything in bag? I don't know how much. Three carloads of officers went all the way to Jacksonville to get it and bring it back here, and clutter up the clerk's office. And here, what does it prove? What does it prove? Absolutely, positively nothing. Nothing. Do these shells prove he killed anybody? Said he bought them right down the street. Let's convict him cause he's a gun-nut. You all better convict me, too, cause I'm a gun-nut. I got a bunch of them in my home. I got one in my car. I don't have one on me now, but it won't be long before I could get me one. I love to carry guns. I like to shoot snakes. I never shot no human being. But

why? I love to have a gun. So, convict him cause he's a gun-nut. These things here, all of this. He admits he shot him. He admits he fired two shots in that room. What does that prove? What does it prove? Absolutely, unequivocally nothing.

Now, Mr. Sams had the chair pointed this way while ago. And he says he was over here and he shot him in the left shoulder and he fell out of the chair. Fell out of the chair like this, went down. All right, ladies and gentlemen, look at these photographs. If he was pointed towards the wall, his head would be over towards the wall. Not out by the cookie thing. What he did when he went over to the drink cooler to get him a drink. Now, it was most reasonable, ladies and gentlemen of the jury. What did Sue Nell do before she left? She counted the money. Checked up. What do you think her father, Alfred Boatright, would do when he came in? Say? The man is taking over the store. Don't you think he would turn around and check the cash register, too? Isn't it just as reasonable to assume that Alfred Boatright walked in that store. Sue Nell was leaving. And Mr. Boatright took the money out and was counting it, counting it. I think you'll find here the cash thing out, right there. Took it out, put it right there. And had the money laying there counting it. And at that time, they had finished gassing up outside and the defendant did walk in.

ARTICLE 2

DEATH PENALTY GENERALLY

Cross references. — As to constitutional guarantee against deprivation of life without due process, see Ga. Const. 1976, Art. I, Sec. I, Para. I.

U.S. Code. — For provisions of Federal Rules of Criminal Procedure, Rule 38, relating to the death penalty, and annotations pertaining thereto, see 18 U.S.C.A.

17-10-30. Procedure for imposition of death penalty generally.

(a) The death penalty may be imposed for the offenses of aircraft hijacking or treason in any case.

(b) In all cases of other offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating circumstances which may be supported by the evidence:

(1) The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony;

(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony or aggravated battery, or the offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree;

(3) The offender, by his act of murder, armed robbery, or kidnapping, knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person;

(4) The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value;

(5) The murder of a judicial officer, former judicial officer, district attorney or solicitor, or former district attorney or solicitor was committed during or because of the exercise of his official duties;

(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person;

(7) The offense of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim;

(8) The offense of murder was committed against any peace officer, corrections employee, or fireman while engaged in the performance of his official duties;

(9) The offense of murder was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement; or

(10) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.

(c) The statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases the judge shall make such designation. Except in cases of treason or aircraft hijacking, unless at least one of the statutory aggravating circumstances enumerated in subsection (b) of this Code section is so found, the death penalty shall not be imposed. (Code 1933, § 27-2534.1, enacted by Ga. L. 1973, p. 159, § 3.)

Cross references. — As to time limitation on prosecutions for crimes punishable by death, see § 17-3-1. As to presentence hearings in death penalty cases, see § 17-10-2.

Law reviews. — For article opposing capital punishment in Georgia, see 15 Ga. St. B.J. 159 (1979). For article supporting capital punishment in Georgia, see 16 Ga. St. B.J. 48 (1979). For article surveying Georgia cases in the area of evidence from June 1979 through May 1980, see 32 Mercer L. Rev. 63 (1980).

For comment analyzing and criticizing the 1973 capital punishment statute in light of Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972), see 24 Mercer L. Rev. 891 (1973). For comment on Alderman v. State, 241 Ga. 496, 246 S.E.2d 642, cert. denied, 439 U.S. 991, 99 S. Ct. 593, 58 L. Ed. 2d 666 (1978), see 31 Mercer L. Rev. 349 (1979).

JUDICIAL DECISIONS

Analysis

General Consideration
Mitigating Circumstances
Aggravating Circumstances
1. In General
2. Prior Convictions
3. Crime Committed While Engaged in Commission of Other Crimes
4. Outrageously or Wantonly Vile, Horrible, or Inhuman Circumstances
5. Murder of Peace Officer, Corrections Employee, or Fireman, or for Purpose of Avoiding, Etc., Arrest or Custody

Mr. Highsmith did follow him. No question about that. Mr. Highsmith followed him in the door. It was hot outside. I don't know if he went and opened the door or not, of the cooler. But there's one thing for certain, there's absolutely no evidence that the defendant opened it. So, maybe he was there getting him a drink. And all of a sudden, when Willie James Wilson said, I didn't have enough money to pay for it, an argument did break out. And wouldn't Morris Highsmith immediately, if he heard two arguing at the cash register, turn and go towards that cash register to see what was going on?

You know, it was a funny thing. Every one of these officers stood on that stand -- intelligent, brilliant officers. No, there was no weapon there. Couldn't have . . a weapon. Hu huh. No guns, no nothing. I asked him, I said, "Well, what's this over here in this corner right here by his feet?" "Oh, that's the leg of a table." "Leg of the counter," he said. Excuse me. Leg of the counter. Somehow find State's Exhibit Number 13. I want you to look at it. Look at that there thing, the leg of the counter, right there laying at his feet. Take a look at it. What is it? Leg of a counter. And I'd hate to face any man with it, right here. Now what -- you think they just left that laying there? On the floor. No weapon whatsoever. There is is. Plain view. You could kill a man. You could beat him to death in a hurry

with it. Is that what Morris Highsmith reached down and picked up when he was shot? Was it? If we're going to be fair to all of us, is the officers being fair there? To make you believe that no such weapon was even there? I think any one of you can tell. That is more . . You can't tell exactly where this body was. Photographs at the angles you take them can be awful deceptive. Cause they draw this photograph here, just like this here. And he went in there and he put him clean out here. His legs was clean out back of that counter. With his head way out here. Look a there. Big old thing. They got Morris Highsmith sitting in the chair facing the cash register now. If he was doing that, look where his right arm is, over here. He'd had to shoot him through the wall. Could have shot him in the right shoulder. Just as simple as simple can be. All going . . .

Trouble is, looking at these photographs, ladies and gentlemen of the jury, said there was blood on this chair. There was blood all over the floor. The EMTs that picked Mr. Boatright up had to get blood on their shirt if they were down there working with him trying to stop the bleeding. And the EMTs that moved the chair would have had to had blood on his hands. That's where it come from. Other chair the same way. They had to move both of them. All of this to-do. And what are we to do about?

But just so -- just so that they want you to

believe the old men just sitting in the chair, doing nothing when they were executed. Let's look at all this . . ladies and gentlemen of the jury. Deen Strickland did make sense when he said that he was sitting in this chair and his life, live out the rest of their years like the good Lord will let them do. That's what they wanted to do. I'm not going to bring the Lord on this. God might have had a hand in it. He might have had a hand. I don't know. I don't know.

But there are so many different things. Like he said that he had $200. Said he first came over here with a couple of hundred dollars on him. Came back. Said you were making nearly one thousand dollars a months. He said, "Not after taxes and all this other stuff, I wasn't, Mr. Strickland." He kept saying and even arguing, the government was paying him over a thousand dollars a month. Well, here's his JUMPS Army pay, one of them. Now, I know it's dated back from the 1st to the 30th of April, '81. . . show total . . $980.40 something . . allotment collections $2.00. Others $129.83. Net earnings -- that was deductions for something. Net earnings $849.47. Mid-month payment $424.00. So around June 15th, is there anything unusual if you got paid $424 that he wouldn't have had $200 then? Between June 15th. As bad as it is, I doubt if he paid his rent over there, cause he left. So is he lying to you about having some money when the State itself clearly shows you -- clearly, unequivocally

shows you mid-month payment $424. And also around the 30th of each month, deposited in the bank would have been $425. It's right here. It's all on here what he would have received. Said, why did he go to that bank to get money? Because they have a guaranteed deposit of $427 to the Hinesville Bank. And that amount would be going to his bank every month. That's all this is. A statement showing his money does go to the bank each month, the 15th and the 30th. So they must think -- he just lied about everything. Just completely lied about everything.

Now I know your law enforcement officers did an excellent job. They have done a good job. But the whole gist of the facts is, do we convict a man on the muddied water -- do you convict him on the fact that he lied on the application for a job? Do you convict him on the fact that he said he was a sergeant? Do you convict him on the fact that he drove a yellow Grand Prix and the left door wouldn't work? And all of these things. No, ladies and gentlemen, you do not, and should never.

Mr. Strickland says the truth will stand when the world is on fire. And we know that is exactly what will happen. Ladies and gentlemen of the jury, you have heard all these facts in the evidence. He is charged in count one of this indictment that, "Willie James Wilson, Jr., on the 22nd day of June, 1981, did unlawfully and with malice

aforethought cause the death of Alfred Boatright, a human being by shooting him with a pistol, a deadly weapon. And count two of this indictment, he was charged with, "Did unlawfully with malice aforethought cause the death of Morris Highsmith, a human being, by shooting him with a pistol, a deadly weapon." So here he is charged with two counts of murder. Now, this is what we call malice murder. You can -- in murder, a person commits murder when he unlawfully and with malice aforethought, either expressed or implied, causes the death of another human being. That's all. . requires. Of course the judges charge you express malice is that deliberate intention, unlawfully, to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Malice.

Now, ladies and gentlemen of the jury, so therefore, Willie James Wilson told you all this that happened. He stopped there at the 121 Club that day, he did go in and get him a beer. He did go down there and I think the evidence from Sue Nell Boatright clearly showed she had just seen a yellow car. She had sold a black man a pack of cigarets. They were going to make something to do with why he smoked one kind one minute and one the next. But if he wasn't smoking Kool cigarets, and hadn't been smoking Kool cigarets, I think the Sheriff or some officer would have got up here and tell you what he's smoking up

there in jail, if it ain't Kool cigarets. I don't think there's any doubt the type he was smoking that day, and the type he did. But what difference would it have made, whether he told you it was Viceroys or cigars or what? The evidence was he went in there and bought a pack of cigarets. There is absolutely no doubt, no question that he did go by that place. No doubt that Sue Nell was there in that place. And there is no doubt it would have been a lot easier to have robbed her than it was them two men. So we have to look at his actions, his intent. He did go down there. He turned around, regardless of whether his car, his radiator was bad, or he stopped. The fact is, he did stop. He told you he stopped. There's no doubt he did turn around and he come back and pulled up to the gas pump.

He said he did have $25 when he left that morning. Something like that. I don't know if Willie James Wilson actually knew exactly how much he had on him. How much he did spend that day, or what. Or what his intentions were. But there was one thing for certain. We're not talking about stealing gas. We're talking about murder, malice aforethought. Did he? Two places there. And there's no question. There's places between here and Hoboken. There's places in Hoboken if he wanted to rob something. There's all kind of small groceries. Two or three between Hoboken and Waycross. Some on the outskirts. Some on the

other side. They come by Larisey's out here. He's right out there in the middle of nowhere. If they'd wanted to rob somebody. There's absolutely no evidence that he even knew where Boatright's place was down there. But one thing for certain, he did pull back up there. Now, when he pulled back up, back up to that service station, if you will recall the testimony, when -- what was his name, went by there -- the farmer out there that come by and he had seen the people there. Went to Turner's down there. Pernal Sapp. He said he drove by. He saw this car down, parked. And when he came back by -- when he came back by, that yellow car was parked at the pump there. This black man . . Terry's truck was there. Sue Nell's car was there. Morris Highsmith was putting gas in that car at that time. So therefore, Terry had been there. And he was there when Sue Nell was there. He came up and got in Mr. Boatright's car and left. He left his truck, and got in Mr. Boatright's car. So therefore, there was Terry -- there's no evidence -- she swears she met him coming when he walked inside. When she walked out the door, she met him going in. So Sue Nell was there. Morris Highsmith was there, and her father. So therefore, when he pulled up there, he wasn't going to rob the store with just that one person there. There was four of them. There was absolutely four of them.

And you can look at these photographs. Morris

wasn't no little fellow. And neither was Mr. Boatright. Certainly don't let the gray hair fool you. That sure don't mean that you're not still much of a man.

But he did -- I don't know if he didn't know how much gasoline he had in there. But that man walked inside, and he said they did get in an argument because he couldn't pay for the gas. And in the flick of a moment, in fury, as Mr. Morris Highsmith reached down . . and turned. Now, you look at these photographs and it will be just exactly like he said. As I had that doctor up here, I actually went up here and measured it, so I would know, and you would know. With Mr. Highsmith standing. Right here, I put the doctor here. And measured to his back, and down his arm where it would go through here. He had his arm up just a little bit like this at that time. That boy here would have been standing about like that, at that angle. Anyone ever fired a gun at any target less than 25 feet, you don't put it out. It's very simple. Because within two feet, you try to hold it out, and the man will take it away from you and beat you to death with it. It's the mere fact of shooting at close range. They say he's -- oh, he's an expert. He is such an expert. But you look at this photograph here. The boy is such an expert with firearms, and everything else and took so much target practice. What did that doctor say? Said doctor -- it grazed the skin back there, didn't it. You

can see where it grazed it right there before it went in. Slid along the skin. He actually like to have missed him. It's just as clear as could be, it like to have missed him. And slid in right through there into the thorax vertebra and went through his spinal cord and that's what got him. Very simple, simple could be. And that's exactly what -- I want you to do this. It hit that vertebra back there. You'll notice this one right here, it's marked on the back there, move from Boatright. This bullet didn't even hit him, break his arm. It went through the flesh. Missed the bone. Through the inside, the skin. And wound up in the flesh over here. Just as round, and there are not a mark on it. You know why? It did not hit a bone. When you hit the spinal column or vertebras, what happens to the bullet? Came out of Morris Highsmith. Bones will even dent it. Will dent it. That bullet like to have completely missed Morris Highsmith.

Now, they still want you to believe that -- Mr. Strickland says, well, you see him laying there. No, he didn't see him laying there. He said he grabbed that money and ran. He ran. Now, ladies and gentlemen of the jury, use your own knowledge, your own good, common sense. He says he wanted to leave a witness dead. Wanted to leave him dead. Is there any evidence at that time that he would have known Morris Highsmith was dead? Is there absolutely

any evidence whatsoever that he knew Mr. Boatright was dead? Even your doctor testified that Mr. Boatright possibly could have lived if he'd got surgery. He was bleeding. How long does it take him to bleed to death? Apparently -- this thing happened about 4:00. By 4:03 he was on the telephone. He was still talking; he was still conscious. Still moving. Still had the intelligence to call the operator, get us help. Two of us have been shot at Boatright's Handi-Shop at Bristol. Even a few minutes later the operator called back, he said, "Thank you, and hurry. Tell them to please hurry." So the ambulance went out there. It took the doctor 45 minutes there in the hospital to finally determine, and declare him dead. So therefore, when Willie James Wilson left out of there, he wasn't dead. Willie James Wilson didn't know whether he was dead or not. You think he went around there and turned them over and looked at them to see if he'd hit them, or what? Or if they even fell or what. He grabbed that money and ran with it. I'll guarantee you one thing. If he was a cold, callous killer, like Mr. Deen Strickland said he was, it would have been no doubt in your mind or anyone else, because he would have walked behind that counter, and he would have took that gun, and you would have found a bullet hole right in the back of Morris Highsmith. And he'd have walked right over here. And he might have had to put two more in Mr. Boatright to get him down. And when he fell,

you would have found a bullet in the back of his head. He would have known he was dead, if he had intended to kill him. And you can't say he was fixing to run. He could see out the window and out the door. There wasn't nobody out there.

You know, acts speak louder than words. Acts speak so much louder, cause that is the way it said it happened. He did grab that money off the counter. And isn't it reasonable to say that Mr. Boatright was counting it? Yes. So easy. But ladies and gentlemen of the jury, look at this. What do you have in this case? You say this. Let's convict him because he stole the gun from his daddy, Willie James Wilson, Jr. Stole it from his daddy, Willie James Wilson, Sr. He was the first one testified. That makes him guilty. Did Prince D. Duncan tell anything except back 1974 his daddy bought a pistol. But Deen Strickland and Fletcher Sams wants you to think that he's so sinister he's got that gun hid somewhere where he can go back and get it. No evidence to that effect. Really, what difference does it make if it was stole out of his car in Jacksonville, or at the bottom of the Saint Mary's River? What difference does it make? Or hid in Jacksonville? He said, "I did shoot that gun. I didn't know I'd killed them when I left." Are we going to hold it against him cause he went to Jimmy Cribb. He said he needed some money. Deen says he was going down there to rob, but he went in and applied for a job. He

applied for a job to work in the woodyard there. Same thing him and Darris Miller said they were supposed to go to work that day. He did want to earn some money. Wasn't completely broke, cause Wes Highsmith said he paid him at least $3. Of course, Carol Herrin, the whole facts there, it don't matter. Every body is capable of making mistakes. He dated it the 23rd, ready to go to work in the 23rd. You know and I know that's a mistake. It's the 22nd. Is there any reason to doubt it was the 22nd? None whatsoever. Lot of folks don't know what day of the week it is. Like Wes Highsmith said, he said one of them got out and went to the bathroom. Wes has a lot of people in there, but it don't really matter. He was there, his car was there. It don't matter how much, if he paid him $3 or $4 or $5 worth of gas. It is his gas. Denny Hill went out there and found the slug. Did he deny firing his gun out there two or three times? John Pike went over there and recovered some things from the boy's daddy. Roy Blackstock saw the car parked over there. One night he followed it down Lee Street with two people in it. Really that doesn't show anything. Edsel Yeomans, he was the bartender at 121 Club. He saw him there. He didn't see no weapon on him, no. What was his reason? Joe said he got scared, went and got his gun. What did he do to make Joe scared? Intuition, I guess. Parnell Sapp said so-and-so. Sue Nell Boatright. She testified. She identified him by

his mean eyes. Faye W. Aspinwall, telephone operator. Certainly doesn't show anything as far as the defendant being guilty. Tommy Roberts the same thing. Took the telephone call. We certainly don't deny the telephone calls were made. Glenn Gillis, he was the first officer in that thing, and he couldn't tell you who moved that chair, who moved the body. He said it was laying face-down. EMTs thinks he moved it over. Of course, even GBI agent told you when he got there, Lee Sweat, that he turned it over and looked at his back. Glenn Gillis went all over th building. Only thing Dr. Donald Zorn could tell you that one of them lived 45 minutes, the other was already dead. Laura Cooper saw a yellow colored car come through Patterson. Come off the Tyre Bridge Road.

After it all happened, he came back to Blackshear, got his stuff. I don't know apparently, right there is his worldly possessions. There, and his car. Took off and went to Waycross, they say. Then he did stop in Folkston. You know, Deen Strickland, oh, made so much about, well, your place is off of U.S. 1. Couple of blocks over from U.S. 1. Yes, it's over there. You can't quite see it from U.S. 1. Did Mr. Strickland actually expect him to be going down U.S. 1? But he did stop there. There's no doubt. He stopped there. He bought a rag to wipe his car with. Some Armoral to clean the vinyl with. And what did he say when Mr. Strickland asked him, "Why did you do

that?" Stopped down there and he said he slept a little while. Why? I was so scared, and my heart was beating so fast, I had to do something just to calm down. And he stopped and washed his car. His heart was beating so fast. Now, is that -- isn't that reasonable? Didn't know what he was going to do. He knew he had done wrong. . . Patel. He did stop at the motel. There's no if, ands, or buts about it. He stopped at the motel. He told you he stopped at the motel. R.N Assaf gave him a ticket. Mr. Strickland says, "Let's convict him because he went to the movie." Convict him cause he went to the movie. I guess he was wrong to stay with Alvin Johnson down there. What did Alvin Johnson and him do? Alvin told you -- I think Alvin really told you the truth. He's the one said how scared he was getting in and out of that car, when they had that shotgun. He said they went and looked for a job, went and looked for work. Couldn't find any. He and his sister and them come up here with him. They were arrested. Alvin Johnson took the Sheriff and all of them back down here to get his clothes. Awfully nice of the Sheriff and them to go bring his clothes here to him. Of course, you and I know the reason they went to Jacksonville, was to find the gun. They haven't found it. That's really not material. You don't have to have the gun.

Dr. Byron Dawson testified. Richard King.

Roger Parien. Lee J. Sweat. Sheriff Noah Strickland. Weylon Yeomans. Jerry Abernathy. All of these individuals you have heard, some 32 of them. Which one of them has come up here and said he really lied? Even expert testimony like Roger Parien said it did come from a Colt. He don't know how many thousands or millions of Colts are made. Says, I cannot say positively, but in my opinion, it could have. That's just a mere opinion from an expert. Just a mere opinion as to how far when Morris Highsmith, he said his feet buckled in a hurry. His feet buckled in a hurry. But nevertheless he or no one else can tell how Morris Highsmith twirled or how long it took him to buckle or now far he fell. Start fall -- I'd start falling right here, and my head would land way up over yonder. No way to tell that.

Ladies and gentlemen of the jury, is there any direct evidence whatsoever that he intended to rob that place when he went in there? Was there any question? Let's say even if they did. I don't know what Mr. Highsmith said to him, or what the argument was about. But human nature would tell you it had to be something or this would have never happened. Would have never been a shooting. And if he had walked in there with a gun in his hand and said, "Give me your money," and if Mr. Highsmith said -- or Mr. Boatright said, "Here," said, "Lay down on the floor," tore the telephone out and took off just as easy. But there was

something went on in that place to make him go crazy. Was it that board you're going to look in Exhibit 13 and see Mr. Highsmith was fixing to get, right there? Was it because they called him a black-you-know-what? I don't know. Neither do you, really. We look at all this testimony, identification testimony, physical facts. . . flight he left to conceal hisself. All the questions of blood stains. So therefore, you not have what he has to say. That's all you've got. Is the credibility of his testimony. He was there as a witness. And I do not deny that there is sufficient evidence. If you believe the confession, if you believe this evidence. And I'd be the last one to stand here and tell you he would not be guilty of murder, under these circumstances, even if it happened just as he said. Both parties. I do question, ladies and gentlemen of the jury, and it is my duty to point out any defect regardless of how I feel or what I'd do. Because the Judge will charge you that the burden is upon the State to prove to you to a moral certainty and beyond a reasonable doubt, each and every material allegation in the indictment. Everything that is material must be proven beyond a reasonable doubt. And after you've heard the evidence and the law, if there is a doubt in your mind, or if it is wavering, then the law says that doubt shall be resolved in favor of the defendant. And he shall be acquitted. That means regardless of the guilt

or not. So Willie James Wilson, Jr. did shoot Alfred Boatright with malice aforethought. He shot Morris Highsmith. But I'm going to ask you ladies and gentlemen of the jury, in all fairness and honesty, in the name of justice itself to look at three -- count three of this indictment. Now, at the time he drove up to that station, I don't know if Terry had left or not. There was three people there subject to robbery, to be robbed. There was Sue Nell Boatright,and the evidence is undisputed and very clear that Sue Nell Boatrigh is the owner and operator of Boatright's Handi-Shop. The lease is in her name. The whiskey license is in her name. The beer license is in her name. And, her business license. Three license you've got to have in that store. All of the in her name because she had it leased from her daddy as the owner and operator of Boatright's Handi-Shop. So, if he had robbed Sue Nell Boatright as she coming out the door, the money in the cash register belonged to her. Anything . . h belonged to her. Did he rob Sue Nell Boatright individuall or doing business as Boatright's Handi-Shop? He is not accused of that, no. Same thing Morris Highsmith could hav been robbed. He could robbed Morris Highsmith at the pump, took anything off of him. Took his money, his watch, his r or one penny by the use of that weapon and he would have be guilty of armed robbery of Morris Highsmith. Did he rob Morris Highsmith? There's absolutely, unequivocally no

evidence that he robbed Morris Highsmith. Whose money did he take? Sue Nell Boatright's. The third person he could have robbed was Alfred Boatright. But to rob Alfred Boatright he's got to take his money off of him. Now, this indictment -- and you read it. You've got to prove every material allegation, with intent to commit theft, take property of value, to wit: approximately $90 in U.S. currency, the property of Alfred Boatright, from the immediate presence of Alfred Boatright by use of an offensive weapon, to wit: Ladies and gentlemen of the jury, there is not one piece of evidence in this record to show that he ever robbed Alfred Boatright. He took the money from Sue Nell Boatright. They should allege and prove -- that's what they haven't shown you. Took her money. He is not accused of robbing Sue Nell. She don't have to be there. They took her property from the store. It was her store, she was the owner of it. And technically and legally he is not guilty under this evidence of robbing Alfred Boatright of anything. He picked up and took the money of Sue Nell out of that store. Therefore, there's one thing for certain. Justice shall prevail. Only a verdict of not guilty of armed robbery will stand. Alfred Boatright. Cause I asked each one of the officers, "Did you inventory the property? Did you check it?" Only one agent ever tell -- Joe Sweat says yes. I think he told John Thigpen, says, "Yes, over at the hospital I did look in his

wallet. I got his driver's license out of it. I did look in Morris Highsmith's wallet and got his driver's license out of it." How much money did they have? Is there any evidence? And I asked that same question. Did you all find anything on him to connect him with taking one thing from Alfred Boatright? No.

Now the State has utterly proved -- and I submit to you, ladies and gentlemen of the jury, if you want to write a fair verdict, and in justice, he's not guilty of taking anything from Alfred Boatright except his life. Cannot stand here and deny that. There's no way, and I will not. He is entitled to a fair trial, and a just trial and it is your duty to give him that. And if the State failed to prove to you to a moral certainty and beyond a reasonable doubt the material allegations -- and the Judge is going to tell you. You listen to the Judge. It will be your duty to acquit the defendant on that charge. You've got to consider each and every charge.

And the mere fact that you read on down on that fact by use of offensive weapon, to wit: a pistol and during the commission of said offense did intentionally inflict serious bodily injury, to wit: the death of Alfred Boatright and Morris Highsmith by use of said offensive weapon. All of that is nothing more than hogwash in there that could increase the penalty. It does not have any

bearing upon whose property it is, or who's being robbed or any of that. That little part there gives a greater penalty, is all. And the Judge is going to charge you at this time that you're not concerned with punishment. You're not

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concerned. You're not to concern yourself with punishment whatsoever. You're not to concern yourself with punishment. You're to concern yourself with guilt or innocence of James, Willie James Wilson, Jr. on each count of this indictment. Look at it, consider it, and we ask you -- Fletcher Sams says we're trying to throw up a smokescreen. I conscientiously wonder, what smokescreen have we throwed up? I guarantee you, if me or -- John Thigpen, we weren't out there that day. We weren't called upon to go out. If we'd been invited out there to the scene, or -- of course, we weren't even involved at that time. Had no right. We might have knew who these Mexicans were that John was asking about. We had information, apparently, that they were in the area. We wanted to know who all they talked to, to see if anybody was out there. We were trying to search and find out --

MR. SAMS: I object, Your Honor. I hate to interrupt, but he's arguing facts that are not in evidence.

THE COURT: Well, what facts is he arguing that isn't in evidence?

MR. SAMS: He made a statement to the jury that they had evidence that there were Mexicans out there. There's been no evidence of that fact.

MR. PRITCHARD: I did not say that. I said

Mr. John Thigpen --

THE COURT: Let's find out what he said before I rule on it. What are you arguing to the jury then, Mr. Pritchard?

MR. PRITCHARD: It is my -- he argued that we throwed up a smokescreen because we kept asking about the Mexicans. I . . say we were searching for some Mexicans. If we had found them, we might have had them here. But please the Court, I submit that is a fact. It is. We've asked about the Mexicans. I think we have a right to explain it. That's all we were saying.

MR. SAMS: Your Honor --

THE COURT: No, sir, there's no evidence of any Mexicans involved in this event. I'm not going to let you argue that to the jury. That would be improper. That would go beyond any evidence that's been introduced in this case. There is no evidence in the record in this case, other than your leading questions to some State witnesses, which you always got a "no" answer to about Mexicans being involved, and I'm not going to permit you to argue that.

MR. SAMS: Thank you, Your Honor.

ARGUMENT BY MR. PRITCHARD, Cont'd.

Ladies and gentlemen of the jury, at any time have we endeavor to try to throw up a smokescreen by bringing any of them in here? Or anybody else? What type of lie have we tried to bring you, if we're throwing a smokescreen?

They say that Mr. Highsmith never had a gun in that place, but Sue Nell said he normally kept one with him down there. Sue Nell did, too. They clearly told you that we wouldn't be able to rebutt what they've said --

MR. SAMS: Your Honor, again, I hate to interrupt, but I object to another argument about a fact not in evidence. Sue Nell's statement was contrary to that. She was referring to Mr. Boatright. Not Mr. Highsmith.

MR. PRITCHARD: I fail to see his objection, if it please --

THE COURT: What are you arguing to the jury, Mr. Pritchard?

MR. PRITCHARD: Please the Court, right now if I'm going to keep being interrupted, I --

THE COURT: Well, just tell me what you're arguing, that he's objecting?

MR. PRITCHARD: I want to know what his objection is. That's what I'm trying to find out now.

THE COURT: State your objection, Mr. Sams.

MR. SAMS: My objection is, he just stated to

the jury that Sue Nell Boatright stated that Morris Highsmith often carried a gun at the store, and that is contrary to my recollection of the evidence.

THE COURT: Is that what you're arguing?

MR. PRITCHARD: May it please the Court, I'm -- like my -- I probably said that. I apologize to the jury. Sue Nell Boatright, and I'll challenge the record, says her father, Alfred Boatright, carried a gun and had it in that place on numerous and sundry times.

THE COURT: Proceed with your argument.

CLOSING ARGUMENT BY MR. PRITCHARD, Cont'd.

And I'll submit to you, the only thing that Morris Highsmith had was his stick there. Because I sure don't want to mislead you whatscever. I am apt to get Morris Highsmith and Mr. Boatright confused or mixed up. For God's sakes, don't hold that against that man and electrocute him for something I have to say, or do anything else to him. I hope you are not that gullible that Mr. Sams himself said you might be.

Now, ladies and gentlemen of the jury, I ask of you, as I have explained, and I do beg and I plead with you. Cive this evidence your serious consideration. I know what your verdict will be on the first two counts. The other one, I don't think, will stand up. But in all sincerity,

I hope, certainly you will not do what Deen Strickland really wants you to do. Convict him, if you must, for murder on the fact that he did shoot those two people. That he might have done it in a mad fit of temper at what Mr. Boatright said to him. But there is absolutely no evidence that he is a cold-blooded, callous person. I think the evidence is completely to the contrary. You seen him on the stand. He can't talk plain. And I imagine he did get in an argument with Mr. Boatright down there over the payment of that gas. And that's what caused the death of Alfred Boatright and Morris Highsmith.

One thing for certain -- the only thing I agree with Mr. Strickland and them on: that the truth will stand when the world's on fire. That is for certain. And then Mr. Strickland did say it's time for him to accept his responsibility. It's time for him to accept his responsibility. And you know, that's one thing we ask in all of our children, son or daughter, when you learn to accept your responsibility, then you are a man. Then you come to life.

I tell you ladies and gentlemen of the jury, he might not be a human being, he might be possessed of the devil, or whatever might have happened to him on that day, he has accepted his responsibility, and did accept his responsibility. Because he got on this witness stand and raised his hand to God Almighty and swore. He didn't have to look Sue Nell. She was back there. But the rest of the

Boatright family out here. He had to look out there and admit, say, "Yes, I didn't know he was dead." He had no way to know that their father was dead, because he was still living when he probably crossed the Florida line, he was still in the hospital. Could that be a lie? His own doctor -- you know, it took over an hour. He lived over an hour. Won't take that long to get him . . But he did accept his responsibility by taking this stand and saying, "Yes, I went in there. Yes, I did. We got in an argument and he said certain things. And when Mr. Morris Highsmith went down, I didn't know if he was going to get a gun or what." Most people do realize these small grocery stores do have guns behind the counter. He didn't have one that day, but there's no way for Willie James Wilson to know if he run out the door he might have shot him in the back. But certainly, he did not, as Deen Smith (sic.) Strickland said, execute them. He like to completely missed both of them. One of them in the arm. He didn't shoot them in the head. Because they were as close as I am right here to Mr. Popham. Just that close in there. You can't. No way possible. The two of them were as close as this lady to this one right here, to him. Right there in that six-foot area there, over that counter. Morris turned to the left. He turned to the left, and he was shot right here in this left shoulder. Like to have missed him when he went down. That would have been

about the angle of this thing. And at that time, as he fired here, Mr. Boatright standing by the cash register, he was turned, and he was shot here in the arm. Went in here and over here. Just that easy, turned -- bamm, bamm. He had to be bending over. But he did accept his responsibility.

I don't know if God's forgiving him or what He might do. I'm not asking and that's not the question here at this time. Right now, he has accepted his responsibility by telling the people in Pierce County, "I done it." So ladies and gentlemen, a man that's going to come in here and admit, "I fired the gun at them. I was mad when I did it." The District Attorney's office has got to still, right up to the very last, tell you he's lying. That takes gall and guts. I say he told you the truth. He admitted to you that he fired the shot that killed Boatright. He fired the shot that killed Morris Highsmith. And he's back here now to pay for it. That is accepting responsibility. Ladies and gentlemen of the jury, you accept your responsibility. Find him guilty of count one and two. But if you accept your responsibility, your verdict on count three of the robbery of Alfred Boatright -- I took his life, but I took nothing from him -- have to find him not guilty on that.

Thank you.

MR. STRICKLAND: Judge, can we approach the Bench?

We expect the evidence to show you before Mr. Boatright expired his life, that he made a telephone call. We expect to have the operator, who received that telephone call and who logged it, to testify of the contents of that telephone conversation. And we expect that the officers who arrived on the scene, that he made a statement to them before he was placed in the ambulance and brought to the Pierce County Hospital about what had happened to him.

When we show you that, ladies and gentlemen, we would ask this jury, you ladies and gentlemen, to return a verdict of guilty as to each count of this indictment. Thank you very much.

THE COURT: Mr. Pritchard, you may proceed on behalf of the Defendant.

OPENING STATEMENT BY MR. PRITCHARD:

Ladies and gentlemen of this panel, I think I've already introduced myself to you. I'm M. C. Pritchard. Along with myself and John Thigpen over here, we have been appointed to represent the defendant. And our main interest, and only interest, first of all as officers of this Court, we're just as much an officer of the court as your Sheriff or Mr. Strickland or any one else. It is our job to see that the Defendant is given a fair and impartial trial of a panel of jurors picked from his peers in this county. As you noticed, we did go through a very lengthy voir dire to obtain

a jury.

But at this time, I cannot tell you what the evidence is going to show. I do not know. I do know, and I do not deny and we will not question, that Alfred Boatright was murdered. He was killed here in this county. We will not deny that Morris Highsmith was killed. As far as the robbery's concerned, of course, that's the question of fact for the jury to determine -- all of these things.

But it's our job and our duty to see -- The Defendant is not required to produce any evidence whatsoever to prove he's innocent. First of all, under our Constitution of the United States and of Georgia, the burden's upon the State to prove to you to a moral certainty and beyond a reasonable doubt each material allegation in this indictment. The burden is upon them to prove to you.

And, ladies and gentlemen, the evidence that's required to prove this -- Mr. Strickland has stated to you what he intends to prove. You're going to take the evidence from the witnesses from this stand. And the Honorable Clarence Blount is going to charge you on the law. In a criminal case you are judges of both the evidence and the law. You take the evidence from this witness stand and the law from the Court. What I have to say is not evidence; what Mr. Strickland had to say is not evidence. But, he is required to prove each one of these items to a moral certainty and beyond a reasonable doubt.

First of all, he says I'm going to prove that he came here on Friday night, June 19, 1981, met with Irene. He met with Eric Miller which is no crime. They went out to the river, shot a gun, target practice. It's no crime whatsoever. The color of his car and his Gran Prix and this-that and the other, certainly no crime to drive a yellow Gran Prix. Certainly was no crime if he wanted to spend the night over there at Irene Adams' house, go to Hoboken, go to Waycross. No crime to go out here to 121 Club and buy a beer, or to drive by Mrs. Cooper's house or this house or the other house.

What we are concerned with, and only concerned with, is what happened at Bristol, Georgia, at Boatright's store around 4:00 p.m. on June 20th, 1982. All of this other stuff is really immaterial. But what we want to do is find out what happened there.

It is not, and should not ever be, a death penalty, or any other crime, when you have to shoot someone or in self-defense or other reasons or in justification. There was a killing took place. And I think you want to know what actually took place out there. But most of all, regardless we want to know exactly who did it. Not that this man, here, Willie James Wilson was present, or his car was there. He might be guilty of participating in a robbery.

It's my duty and Mr. Thigpen's sworn duty to determine if he pulled the trigger, and why he pulled the

trigger. Because ladies and gentlemen, first of all, you're going to hear all of this evidence. Like Mr. Strickland said, good number of witnesses. You could put a thousand witnesses up there, and I want to see the witness that identifies Willie James Wilson as the one that shot him.

A good bit of evidence. Well, of all of this other smokescreen that we might have about what happened out here and there, and all the exhibits, ladies and gentlemen, let's look very closely to each piece of evidence. How does it tie in to Willie James Wilson? That's what you're concerned with.

Because first of all, when you hear all this evidence and the charge of the law and these type things, you'll be called upon to determine whether he's guilty of murder -- Mr. Highsmith. Guilty or not of murdering Mr. Boatright. Guilty or not of the robbery.

And then, you will have another hearing, if you so find him guilty of that, to determine whether he lives or dies. So, for goodness sake, keep your mind clear. Right now he is innocent until proven guilty beyond a reasonable doubt regardless of what you think. And make sure, as I do, this is one time that we cannot afford to make a mistake. Because one of you, if this man is found guilty, is going to be required to sign his death warrant. So, listen to this evidence very closely. Very closely. Because at the end of